

2/12/08

Hi Craig,

Please see my supervisor's response below. Also, I have included a copy of the GIS zoning information for the parcel which clearly shows that no zoning or other codes apply to the property since it is in an Indian Reservation. Hopefully our response below and the above attachments help clarify Code Enforcement's position on this matter.

Sarah E. Hale

Office Assistant

DPLU - Code Enforcement San Marcos

760- 940-2955 (internal only)

760-940-2893 (complaint line)

Sarah.Hale2@sdcounty.ca.gov

From: Kirkland, Timothy R

Sent: Tuesday, February 12, 2008 1:39 PM

To: Hale, Sarah

Cc: Arganda, Dottie; Collins, Sean; Francois, Pamela; Ligayon, Sheila; McKee, John; Murray, John; Pauu Jr, Penu; Causey, Thomas

Subject: FW: County building department reply

Hi Sarah –

You may use the following:

Dear Mr. Benson:

You ask if we can you provide you with any documentation and/or legal basis as to why this property is not within the jurisdiction of San Diego County?

The County of San Diego does not have jurisdiction on APN 133-180-02-00 (the Mushroom Farm). Jurisdictional matters for structural and life safety fire issues and zoning matters rests with the Rincon Reservation. The property in question does have fee title, but based on past research and after consultation with County Counsel, the property is still part of the Rincon Reservation. Enforcement is a tribal issue because this responsibility was retained by the tribal government.

The County of San Diego issued a letter dated March 25, 2005 on a similar matter at another reservation (see above attachment). The following case law examples support the determination that the County does not have zoning or fire code enforcement responsibility on the reservation in that certain civil powers are retained by the tribes: Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001), Cardin v. De La Cruz, 671 F.2nd 363, (1982), Brendale v. Confederated Bands and Tribes of Yakima Indian Nation, 492 U.S. 408 (1989).

Further the County Zoning Ordinance Section 1006 states "The County Zoning Ordinance shall not apply to Indian Reservation lands within the County of San Diego. Such lands are defined as those parcels which are identified as Indian Reservation lands by an Act of the United States Congress."

Based on this section, and the references above, the County does not have land use jurisdiction over the subject parcel of land.

Sincerely,
Timothy Kirkland
Code Enforcement Coordinator
Dept. of Planning and Land Use
Code Enforcement Division

From: SanMarcos, DPLU
Sent: Tuesday, February 12, 2008 12:42 PM
To: Kirkland, Timothy R
Subject: FW: County building department reply

----- Forwarded by Craig Benson/R9/USEPA/US on 02/12/2008 09:35 AM -----

Elizabeth Janes/R9/USEPA/US

02/08/2008 11:31 AM

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O

Tina Williams/R9/USEPA/US@EPA, Craig
Benson/R9/USEPA/US@EPA

C
C

David Albright/R9/USEPA/US@EPA
County building department reply

----- Forwarded by Elizabeth Janes/R9/USEPA/US on 02/08/2008 11:28 AM -----

"SanMarcos, DPLU" <DPLU.SanMarcos@sdcounty.ca.gov>

02/08/2008 11:27 AM

Hi Elizabeth,

Thank you for the below email and the voicemail. Unfortunately, Code Enforcement does not have jurisdiction on the property located at 33777 Valley Center Rd. since it is within the Indian Reservation. Code Enforcement cannot enforce, even if the property is privately owned if it is located within an Indian Reservation. This property is located on federal land and, therefore, neither State nor County agencies can interfere or have any jurisdiction.

Please feel free to contact our office with any other concerns or questions that you may have. We will be glad to provide you with whatever assistance we can.

Sarah E. Hale
Office Assistant
DPLU - Code Enforcement San Marcos
760- 940-2955 (internal only)
760-940-2893 (complaint line)

Sarah.Hale2@sdcounty.ca.gov

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-----Original Message-----

From: janes.elizabeth@epamail.epa.gov [mailto:janes.elizabeth@epamail.epa.gov]
Sent: Friday, February 08, 2008 10:36 AM
To: SanMarcos, DPLU
Subject: 33777 Valley Center Road, Valley Center, CA

Hello: this email is to follow up on the voice message I left earlier.

Re: 33777 Valley Center Road, Valley Center, CA 92082
Owner: Marvin Donius

I am an EPA inspector authorized to conduct inspections of septic systems and other subsurface discharges with the potential to affect underground sources of drinking water. I inspected this property, doing business as "Mushroom Express", for compliance with federal Underground Injection Control regulations in 2005.

In 2005, the site contained two or more structures, several truck containers, a private drinking water well, a waste oil storage area, and an abandoned vehicle impoundment. The private drinking water well was not in operation and the site was receiving water via a hose from an adjacent property. There were no obvious signs of failure of septic systems at the site, so this EPA program did not take any follow up action other than to recommend maintenance of the septic systems, and rehabilitation or destruction of the private drinking water well.

The inspection was conducted at the request of the Rincon Tribe, but the site is a privately owned commercial parcel. EPA has jurisdiction over commercial septic systems in both tribal and non-tribal areas of the state, so jurisdiction was not a question for this program.

Apparently there was extensive damage to Mushroom Express during last year's fires. Recently, an EPA on-scene coordinator received another request for assistance from the Tribe to evaluate any environmental hazards that remained at Mushroom Express. The inspector determined little if any environmental hazards remained, because everything burned.

EPA does not have the authority to require the facility to abate the structural or other hazards (such as electrical) that may exist at the property. Please let me know if the county building department will investigate this site.

Thanks

.....

Elizabeth Janes
(415) 972-3537, FAX (415) 947-3549
USEPA Region 9 Ground Water Office (WTR9)
Underground Injection Control Program
75 Hawthorne Street, SF, CA 94105
www.epa.gov/region09/water/groundwater/index.html



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